



COMMONWEALTH OF KENTUCKY
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OAG 17-001

January 6, 2017

Subject: Whether a public ambulance service may provide non-emergency transportation services, and whether those services may be funded in part by an ambulance service district tax.

Requested by: Timothy J. Crocker
Franklin Simpson County Ambulance Service

Written by: Joseph A. Newberg II, Assistant Attorney General

Syllabus: A Class I public ambulance service may provide non-emergency transportation for medically necessary health services. Such non-emergency public ambulance services may be funded in part by an ambulance service district tax.

Statutes construed: KRS 67.083; KRS 108.080; KRS 108.090; KRS 108.100; KRS 108.105; KRS 108.175; KRS 311A.025; KRS 311A.030

OAGs cited: OAG 81-332

Opinion of the Attorney General

Timothy J. Crocker, on behalf of the Franklin Simpson County Ambulance Service ("FSCAS"), has requested an opinion of this office on two issues: 1) whether an emergency ambulance service district created pursuant to KRS 108.080 *et seq.* may provide non-emergency transportations services, and 2) whether such services may be funded in part by an ambulance service district tax. We advise that a Chapter 108 emergency ambulance service district may

provide non-emergency transportation services that are medically necessary. We further advise that public ambulance services may fund such non-emergency transportation services, in part, through the district's ambulance service tax.

FSCAS has informed us that, in addition to the emergency ambulance services FSCAS currently provides, it now wishes to begin providing non-emergency ambulance services. FSCAS seeks to provide such services in circumstances that "would involve transportation for patients from home or from a nursing home to the hospital or other medical service provider for non-emergency appointments and medical treatment." FSCAS wants to fund these non-emergency ambulance services through both direct payments from clients and funds from the district's ambulance tax.

I. A Class I Emergency Ambulance Service May Provide Non-Emergency Transportation Services That Are Medically Necessary

KRS 108.080 *et seq.* grants cities and counties the authority to finance and administer ambulance service by creating a special ambulance service district. KRS 108.090 provides:

For the purpose of enabling cities or counties, or parts thereof, to provide **emergency ambulance service** to assure public safety and welfare the General Assembly does hereby allow all of the territory coterminous with the boundaries of a city or county, or coterminous with the boundaries of two (2) or more cities or counties contiguous to each other, to be organized into an emergency ambulance service district for the purpose of financing and administering emergency ambulance service for the residents of the district

(Emphasis added.) While the statute indicates that the stated purpose of these districts is to provide *emergency* ambulance service, we interpret this provision to only require that a Chapter 108 ambulance service district provide emergency ambulance service while not prohibiting a district from providing additional services, such as non-emergency transportation. Other Kentucky statutes relating to ambulance service counsel this interpretation.

Statutes relating to the Kentucky Board of Emergency Medical Services ("KBEMS") contemplate the provision of non-emergency ambulance service alongside emergency service. Under KRS 311A.030(1)(b), Class I ground ambulance providers "provide basic life support or advanced life support services to all patients for emergencies or scheduled ambulance transportation which is medically necessary." Class II ground ambulance providers, on the other hand, provide only "basic life support services but do not provide initial response to the general population with medical emergencies and [] are limited to providing scheduled ambulance transportation which is medically necessary." KRS 311A.030(1)(c). A plain reading of these statutes indicate that the General Assembly contemplated that Class I ground ambulance providers (those providers which are licensed for emergency service) may also offer scheduled transportation services for medically necessary non-emergencies.

Echoing this statutory language, KBEMS has promulgated regulations, as authorized by KRS 311A.030(1), providing that "Class I ground ambulance services shall operate at the [advanced life support] and [basic life support] level to provide emergency *and nonemergency transportation*." 202 KAR 7:501 (emphasis added.) This regulation indicates that KBEMS intended for Class I ground ambulance services to provide non-emergency ambulance services. However, in order to comply with KRS 311A.030(1), Class I non-emergency ambulance services must be "medically necessary." See KRS 311A.030(1).

Under Chapter 311A, "medically necessary" is not defined. However, 907 KAR 3:130, a regulatory scheme promulgated by the Department for Medicaid Services, does provide requirements for a service to constitute a "medical necessity." Under Medicaid, for a covered benefit or service to be "medically necessary," the determination must, in addition to other requirements, be:

- (1) based on an individualized assessment of the recipient's needs,
- (2) reasonable and required to identify, diagnose, treat, correct, cure, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy, and

(3) provided for medical reasons rather than primarily for the convenience of the individual, the individual's caregiver, or the health care provider, or for cosmetic reasons.¹

While this regulation only addresses the requirements for medical services covered under Medicaid, these requirements for determining what constitutes a "medically necessary" service provides a reasonable standard for interpreting the phrase "medically necessary" as used in KRS 311A.030.

Therefore, it is permissible for FSCAS, a license Class I ambulance service, to provide non-emergency transportation services when those services are "medically necessary," as determined by the requirements under 907 KAR 3:130 §2.²

II. A Class I Emergency Ambulance Service May Use an Ambulance Service Tax to Partially Fund Non-Emergency Transportation Services That Are Medically Necessary

Under KRS 67.083(1), fiscal courts are granted "latitude and flexibility to provide and finance various governmental services" and to "levy all taxes not in conflict with the Constitution and statutes of this state," including taxes for ambulance services and "other public health facilities and services." There do not appear to be any Constitutional or statutory provisions that prohibit fiscal courts from levying ambulance taxes for the purpose of providing non-emergency ambulance transportation.

¹ See 907 KAR 3:130 §2 for complete Medicaid coverage requirements.

² It should be noted that if FSCAS intends to cover part of the cost of its non-emergency ambulance services under Medicaid, not only must it satisfy the requirements under 907 KAR 3:130, but it must also meet the requirements of 907 KAR 1:060 § 4. Under that regulation, non-emergency ambulance services are covered under Medicaid only if: (a) The recipient's medical condition warrants transport by stretcher; (b) The recipient is traveling to or from a Medicaid-covered service, exclusive of a pharmacy service; and (c) The service is the least expensive available transportation for the recipient's needs. Thus, Title 907 regulations must be satisfied if FSCAS intends to partially fund its non-emergency ambulance services through Medicaid coverage.

The legislative purpose in enabling the creation of ambulance service districts is to provide "*emergency* ambulance service[s] to assure public safety and welfare." KRS 108.090 (emphasis added.) KRS 180.080, 180.100, and 180.175, also use the phrase "emergency ambulance service," while other sections of Chapter 108 exclude the word "emergency" and only address the creation of "ambulance service districts." Non-emergency ambulance services are nowhere explicitly prohibited, and such services can be compatible with the goals of "assur[ing] public safety and welfare." See KRS 108.090.

Further, KRS 108.105(4) states, "the ambulance service district tax . . . shall be used for the maintenance and operation of the city, county, city-county, or district ambulance service," and provides no mention of an "*emergency* ambulance service district tax."

Finally, in OAG 81-332, we directly addressed the levy of taxes to fund ambulance service districts and advised:

An ambulance service district created under KRS 108.100, et seq., may be funded by a special ambulance service district tax. See KRS 108.100 and KRS 108.105. In addition, under KRS 67.083(3)(d), a fiscal court may use its occupational license tax revenues, or other available general revenues (where not prohibited by constitution or statute), to fund a county maintained and operated ambulance service or an ambulance service operated for the county under contract pursuant to KRS 65.710.

In summary, based on the broad authority of fiscal courts to levy taxes and "to assure public safety and welfare," FSCAS is authorized to provide public ambulance service for non-emergency transportation services which are "medically necessary." FSCAS may also use the district's ambulance tax to partially fund such services, provided that the taxes collected and services rendered are "for public purposes." KRS 108.090, KY Const. § 171.

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A handwritten signature in cursive script, appearing to read "Joe", enclosed within a large, horizontal, oval-shaped flourish.

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Assistant Attorney General